IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DR. AHMAD A. VADIE — PLAINTIFF

vs. — Civil Action No. 1:95cv199-D-D

MISSISSIPPI STATE UNIVERSITY, DR. DONALD HILL and DEAN ROBERT A. ALTENKIRCH, individually and in their official capacities — DEFENDANTS

MEMORANDUM OPINION

Presently before the court is the motion of the defendants for the entry of summary judgment on their behalf. Finding the motion only partially well taken, the same shall be granted in part and denied in part.

Factual Background[1]

The plaintiff, Dr. Ahmad A. Vadie ("Vadie"), joined the faculty of Mississippi State University ("MSU") in June of 1982 as an associate professor of petroleum engineering. The University granted Vadie tenure in 1988. In April of 1992, the Board of Trustees of the Mississippi Institutions of Higher Learning ("the Board") decided to close various educational department at MSU, including the petroleum engineering department. Pursuant to university policy, members of the department were made aware of other faculty position openings at MSU in hopes that professors could be "relocated." The plaintiff was made aware of, and applied for, one of three positions available in the chemical engineering department of MSU. The faculty of the chemical engineering department recommended the plaintiff and two other individuals to fill the three positions, and communicated this recommendation to defendant Hill by letter dated March 3, 1993. Defendant Hill then wrote a letter to Dr. Vadie dated March 20, 1993, informing him that while a position would not currently be

[1] In ruling on a motion for summary judgment, the court is not to make credibility determinations, weigh evidence, or draw from the facts legitimate inferences for the movant. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 255, 106 S.Ct. 2505, 91 L.Ed.2d (1986). Rather, the evidence of the nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. Anderson, 477 U.S. at 255. This court's factual summary is so drafted.

extended to him, "we will continue to consider your application along with those of other candidates . . . ."

The other persons recommended by the faculty committee, Dr. Rudy E. Rogers and Dr. Charles A. Sparrow, were hired to fill two of the available positions. The university offered the remaining position within the department to another individual who declined the offer, and then to another who accepted. None of these persons - Dr. Rogers, Dr. Sparrow, the individual offered the position, and the second individual offered the position (who accepted) - are of the same race or national origin as the plaintiff.[2]

The plaintiff instituted this action by filing his complaint on June 16, 1995, and charges the defendants with violation of his civil rights under 42 U.S.C. §§ 1981, 1983 and 2000e. The defendants have moved to dismiss this action, or in the alternative for the entry of summary judgment on their behalf.

DISCUSSION

I. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." F.R.C.P. 56(c). The party seeking summary judgment carries the burden of demonstrating that there is an absence of evidence to support the non-moving party's case. Celotex Corp. v. Catrett, 477 U.S. 317, 325, 106 S. Ct. 2548, 2553, 91 L.Ed.2d 265 (1986). Once a properly supported motion for summary judgment is presented, the burden shifts to the non-moving party to set forth specific facts showing that there is a genuine issue for trial. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 249, 106 S. Ct. 2505, 2511, 91 L.Ed.2d 202 (1986); Brothers v. Klevenhagen, 28 F.3d 452, 455 (5th Cir. 1994). "Where the record, taken as a whole, could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475

[2] The parties agree that the plaintiff's national origin in Iranian, and his race Aryan.

U.S. 574, 587, 106 S. Ct. 1348, 89 L.Ed.2d 538 (1986); Federal Sav. & Loan Ins. v. Krajl, 968 F.2d 500, 503 (5th Cir. 1992). The facts are reviewed drawing all reasonable inferences in favor of the party opposing the motion. Matagorda County v. Russel Law, 19 F.3d 215, 217 (5th Cir. 1994).

II. INDIVIDUAL AND OFFICIAL CAPACITY CLAIMS OF THE PLAINTIFF

Initially, the court notes that the defendants make much out of the fact that this action is only filed against Mississippi State University, and against two officials of the University "in their official capacities only." Defendants' Memorandum Brief, p.3. This statement is misleading. The plaintiff has in fact sued these defendants both individually **and** in their official capacities, in both his first and in his amended complaint. However, in paragraph three of both these complaints the plaintiff states that "[d]efendants Dr. Donald Hill and Dean Robert A. Altenkirch, who acted under color of state law, are sued only for injunctive relief. Because of their 'qualified immunity doctrine', they are not sued for damages." Plaintiff's First Amended Complaint, ¶ 3.

III. THE ELEVENTH AMENDMENT AND DAMAGE CLAIMS AGAINST THE OFFICIAL DEFENDANTS

The defendants first argue to the court that the plaintiff is unable to prevail on his claims for a monetary damage award because they are all entitled to the protection of Eleventh Amendment immunity.

1. AS TO TITLE VII CLAIMS

The Eleventh Amendment has no impact upon the plaintiff's claims arising under Title VII. Inherent in Title VII is a waiver of sovereign immunity on behalf of the state, and Dr. Vadie may pursue his claim of discrimination against MSU and these defendants in their official capacities. Clark v. Tarrant County, 798 F.2d 736 (5th Cir. 1986); Roos v. Smith, 837 F.Supp. 803, 805 (S.D. Miss. 1993); Fishel v. Farley, 1994 WL 10153, *5 (E.D. La. Jan. 7, 1994).

Nevertheless, only a suit against the agency or a public official in his official capacity may be maintained, for only an employer is liable under Title VII. Harvey v. Blake, 913 F.2d 226, 227-28 (5th Cir. 1990); Dandridge v. Chromcraft Corp., 914 F. Supp. 1396, 1402 (N.D. Miss. 1996); Fishel, 1994 WL 10153, *5. Therefore, the plaintiff's Title VII claims against defendants Hill and Altenkirch

in their individual capacities are properly dismissed.

2. AS TO § 1981 and § 1983 CLAIMS

Mississippi State University is in fact entitled to the protection of the Eleventh Amendment with regard to the plaintiff's § 1981 and § 1983 claims.[3] Where, as here, the state has not consented to suit, "a suit in which the state or one of its agencies is named as a defendant is proscribed by the Eleventh Amendment." Brandley v. Keeshan, 64 F.3d 196, 199 (5th Cir. 1995) (citing Pennhurst State Sch. & Hosp. v. Halderman, 465 U.S. 89, 99, 104 S.Ct. 900, 907, 79 L.Ed.2d 67 (1984)). Claims arising under § 1981, as well as § 1983, are so precluded. Voisin's Oyster House, Inc. v. Guidry, 799 F.2d 183, 186 (5th Cir. 1986); Jett v. Dallas Indep. Sch. Dist., 798 F.2d 748, 762 n.13 (5th Cir. 1986); Davis v. Department of Health, 744 F.Supp. 756, 757 (S.D. Miss. 1990). This protection extends to actions against state officials in their official capacity, for such is in effect an action against the state. Will v. Michigan Dept. of State Police, 491 U.S. 58, 70-71, 109 S.Ct. 2303, 2312 n.10, 105 L.Ed.2d 45 (1989); Wallace v. Texas Tech. Univ., 80 F.3d 1042 (5th Cir. 1996). The protection, however, ends there. Actions for monetary damages brought under § 1983 against state officials in their individual capacity are not barred by the Eleventh Amendment. E.g., Kentucky v. Graham, 473 U.S. 159, 165-70, 105 S.Ct. 3099, 3104-08, 87 L.Ed.2d 114 (1985); Wilson v. UT Health Center, 973 F.2d 1263, 1271 (5th Cir. 1992); Leland v. Mississippi St. Bd. of Registration, 841 F.Supp. 192, 196 (S.D. Miss. 1993); Roos v. Smith, 837 F.Supp. 803, (S.D. Miss. 1993). The officials are, nonetheless, entitled to the protection of qualified immunity for those claims under the appropriate circumstances. E.g., Wallace v. Texas Tech. University, 80 F.3d 1042, 1051 n.10 (5th Cir. 1996). It is apparently the position of the plaintiff that he cannot overcome the qualified immunity of the individual defendants in this case, and has forthrightly stated so in his complaints.

[3] The plaintiff states that the defendants have misconstrued his complaint, and that "[t]he Defendants' brief does a terrific job of seeking dismissal of claims that Plaintiff has not made." Plaintiff's Brief, p.4. That the plaintiff has specifically stated he seeks only injunctive and declaratory relief against the individual defendants in their official capacities takes care of some of the defendants' motion. In the interest of completeness, however, the court will address the plaintiff's claims as the defendant has briefed them.

In any event, any claim for money damages stemming from the plaintiff's § 1983 claims against MSU and the individual defendants **in their official capacities** are properly dismissed by virtue of the protection of immunity arising under the Eleventh Amendment. There is no genuine issue of material fact as to this matter, and the defendants are entitled to the entry of judgment as a matter of law.

IV. THE ELEVENTH AMENDMENT AND CLAIMS FOR INJUNCTIVE AND DECLARATORY RELIEF

Unlike the claims for monetary damages, the protection of the Eleventh Amendment does not serve as an all-encompassing bar to the plaintiff's claims for injunctive and declaratory relief in this case. Edelman v. Jordan, 415 U.S. 651, 94 S.Ct. 1347, 39 L.Ed.2d 662 (1974); Roos, 837 F. Supp. at 805. Likewise, in the same manner as the claims for monetary damages, the Eleventh Amendment does not prevent a plaintiff from proceeding against an individual defendant in their official capacity in order to obtain injunctive or declaratory relief. Kentucky v. Graham, 473 U.S. 159, 105 S.Ct. 3099, 87 L.Ed.2d 114 (1985); Wallace v. Texas Tech. Univ., 80 F.3d 1042 (5th Cir. 1996); Leland, 841 F.Supp. at 196. In this instance, it is also well-settled law that qualified immunity under § 1983 offers no protection for claims of injunctive or declaratory relief. Mangaroo v. Nelson, 864 F.2d 1202, 1208 (5th Cir. 1989).

However, the defendants argue that the plaintiff's claims are based upon the enforcement of a matter of state law, and therefore this court should nonetheless apply the Eleventh Amendment to bar the plaintiff's claims. Pennhurst, 465 U.S. at 102, 79 L.Ed.2d at 82, 104 S.Ct. at 909 (declaring Eleventh Amendment exception for prospective relief against state officials only applies to violations of federal or constitutional law); Harris v. Angelina County, 31 F.3d 331 (5th Cir 1994); Hughes v. Savell, 902 F.2d 376 (5th Cir. 1990) (noting "a claim that state officials violated *state* law in carrying out their official responsibilities is a claim against the state" and barred by the Eleventh Amendment). It is the defendants' position that "[i]n this cause, Vadie is attempting to utilize the federal forum to enforce a state issued contract and employment policy." Defendants' Brief, p. 8. If the plaintiff has stated a state-law action for breach of an employment contract, this would indeed be true and all pendent state law claims would be properly dismissed. However, while the plaintiff has not addressed

this particular spin of the defendants' argument, Dr. Vadie has certainly stated claims arising under federal law. Particularly, the plaintiff has stated claims arising under federal statutory enactments designed to prevent discrimination and violations of federal civil rights. As to rights which are created by virtue of state law, the mere fact that state law may serve as the basis of federal constitutional rights does not make those resulting rights any less federal in nature.

The plaintiff has quite plainly stated causes of action arising under federal law, and the defendants have inadequately explained to this court why this court should apply the Eleventh Amendment and dismiss those claims with regard to prospective injunctive relief. This portion of the defendants' motion shall be denied.

V. TITLE VII AND THE 180 DAY FILING REQUIREMENT

In order to preserve claims arising under Title VII, a claimant charging discrimination must normally file a charge with the EEOC within one hundred and eighty (180) days of the alleged discriminatory conduct. 42 U.S.C. § 2000e-5(e)(1); Rhodes v. Guiberson Oil Tools, 927 F.2d 876, 878 (5th Cir. 1991). In the case at bar, the parties do not dispute that Dr. Vadie filed his charge of discrimination with the EEOC on January 24, 1995. The parties are in dispute, however, as to when the alleged discriminatory act occurred. The defendants are of the opinion that the alleged discriminatory act occurred when the defendant Dr. Donald Hill, by letter dated May 20, 1993, informed Vadie that he would not be offered a position within the chemical engineering department. The letter stated in relevant part:

> While we are unable to extend an offer to you at this time, we will continue to consider your application along with those of other candidates, unless you indicate a desire for us not to do so.
>
> Thank you for your interest in the Department of Chemical Engineering, and we will keep you informed as to the status of your application as the search process continues into the next phase.

Exhibit "E" to Defendants' Motion to Dismiss, or in the Alternative for Summary Judgment. Application of this date as the starting point of the plaintiff's 180 day period to file would result in a finding of untimeliness. The plaintiff, in contrast, states that this letter was not a "final decision"

which is required to start the running of the 180 day period. International Union of Electrical, Radio and Machine Workers v. Robbins & Myers, 429 U.S. 229, 97 S.Ct. 441, 50 L.Ed.2d 427 (1976). His EEOC filing was timely because the "final decision" not to hire, the plaintiff contends, was not made by the Board until November of 1994. Because the "final decision" was not made until November of 1994, Dr. Vadie asseverates that his January 1995 filing with the EEOC was in fact timely. In support of this argument, the plaintiff directs the court to the defendants' own affidavit, wherein Dr. Hill states:

> The recommendations made by faculty members, faculty committees, a department head such as myself, the dean of engineering, and the president of Mississippi State University, with regard to the applications to fill the positions at the Department of Chemical Engineering, were recommendations, not decisions. The final decision is and was made by the Board of Trustees of Institutions of Higher Learning. In Dr. Vadie's case, the decision of which applicants to employ in the three open positions was made by the Board of Trustees of Institutions of Higher Learning.

Exhibit "G" to Defendants' Motion to Dismiss, or in the Alternative for Summary Judgment. While the position of the plaintiff is not necessarily dispositive, the plaintiff's own statement contained in his EEOC charge also is unclear:

> In November, 1994, the Board of Trustees of the Mississippi State University made a final decision not to offer me a contract as professor of chemical engineering.
>
> Even though the faculty had recommended me for one of three available positions, the department head, Dr. Hill, and the Dean, Dr. Altenkirch, refused to accept this recommendation and would not hire me.

Exhibit "6" to Plaintiff's Response. The determination of when the contested decision not to hire the plaintiff in this cause became actionable under Title VII would be best determined at the trial of this matter after the presentation of proof. The undersigned is of the opinion that the defendants are not entitled to the entry of a judgment as a matter of law on this matter. The motion of the defendants shall be denied as to this point.

VI. THE PLAINTIFF'S § 1981 CLAIM

In order to prevail in the case at bar on his claim of race discrimination under 42 U.S.C. § 1981, the plaintiff will have no different a burden than he does to prevail on his claim of racial discrimination under Title VII. Anderson v. Douglas & Lomason Co., 26 F.3d 1277, 1284 n.7 (5th

Cir. 1994); Hamilton v. Rodgers, 791 F.2d 439, 442 (5th Cir. 1986) ("When [§ 1981 and § 1983] are used as parallel causes of action with Title VII, they require the same proof to show liability."); Jones v. Mississippi Dep't of Corrections, 615 F.Supp. 456, 463 (N.D. Miss. 1985). Nevertheless, the defendants argue that the plaintiff is incapable of demonstrating racial discrimination:

> Vadie was not denied any right to make or enforce his contract with MSU. Indeed he has had several contracts to continue teaching at the university since the initial decision to close the Department of Petroleum Engineering. He has fully utilized the appeals procedure provided by the university and the termination of his employment is provided for in the contracts that he has signed with the university each year. . . .

Defendants' Memorandum Brief, p. 13. That the defendants did not interfere with other contracts with the plaintiff because of his race or national origin is of no import to the case at bar. That those other contracts came to a legal and proper conclusion, and that the plaintiff utilized appeals procedures has no bearing on the issue of discrimination in this case. If in fact the defendants refused to enter into a particular contract of employment with Dr. Vadie because of the substantially motivating factor of his race or national origin, then they have violated 42 U.S.C. § 1981 and are liable. There are genuine issues of material fact as to this matter, and the defendants are not entitled to the entry of a judgment as a matter of law. This portion of the defendants' motion shall be denied.

VII. THE PLAINTIFF'S § 1983 CLAIM

Finally, the defendants seek to dismiss the plaintiff's § 1983 claims on the ground that the state, and therefore the individual defendants in their official capacities, cannot be held liable under § 1983 because it does not constitute a "person" within the meaning of the statute. Will, 491 U.S. at 71, 109 S.Ct. at 2312; Hafer v. Melo, 116 L.Ed.2d 301, 310. While true as stated, this fact does not affect the plaintiff's claim in any additional manner than already discussed by the court because he has claims in addition to those directly against the state of Mississippi. "Of course a State official in his or her official capacity, when sued for injunctive relief, would be a person under § 1983 because 'official capacity actions for prospective relief are not treated as actions against the State.'" American Bank & Trust Co., 982 F.2d 917, 921 (5th Cir. 1993) (quoting Will, 491 U.S. at 71 n.10, 109 S.Ct. at 2311 n.10). The plaintiff's claims for damages against MSU are already being dismissed because

of Eleventh Amendment immunity, and his claims for injunctive relief against the individual defendants remain unaffected. The defendants are not entitled to the grant of summary judgment on this point.

CONCLUSION

For the reasons explained in this opinion, the court find the motion of the defendants to be well taken only in part. Some of the plaintiff's claims shall be dismissed, for with regard to those claims there exists no genuine issue of material fact and the defendants are entitled to the entry of a judgment as a matter of law. As to the remaining claims of the plaintiff, there exist genuine issues of material fact, and the defendants are not entitled to the entry of a judgment as a matter of law. As to those claims, the defendants' motion shall be denied.

A separate order in accordance with this opinion shall issue this day.

THIS ___ day of May, 1996.

_____
United States District Judge

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
EASTERN DIVISION

DR. AHMAD A. VADIE — PLAINTIFF

vs. — Civil Action No. 1:95cv199-D-D

MISSISSIPPI STATE UNIVERSITY, DR. DONALD HILL and DEAN ROBERT A. ALTENKIRCH, individually and in their official capacities — DEFENDANTS

ORDER GRANTING IN PART AND DENYING IN PART DEFENDANTS' MOTION TO DISMISS, OR IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

Pursuant to a memorandum opinion issued this day, it is hereby ORDERED THAT:

1) the defendants' motion to dismiss, or in the alternative, for summary judgment is hereby GRANTED IN PART AND DENIED IN PART.

2) insofar as the plaintiff has asserted § 1981 and § 1983 claims for money damages against the defendants Mississippi State University and the remaining defendants in their official capacities, those claims are hereby DISMISSED;

3) insofar as the plaintiff has asserted Title VII claims against Dr. Donald Hill and Dean Robert A. Altenkirch in their individual capacities, those claims are hereby DISMISSED;

4) as to the remainder of the plaintiff's claims, the motion of the defendants is hereby DENIED.

All memoranda, depositions, affidavits and other matters considered by the court in granting in part and denying in part the defendants' motion to dismiss, or in the alternative for summary judgment are hereby incorporated and made a part of the record in this cause.

SO ORDERED, this the ____ day of May, 1996.

_____

United States District Judge